

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

EVEREST NATIONAL INSURANCE  
COMPANY, as Subrogee of Prodigem,  
LLC

Plaintiff

vs.

TRIANGLE F CONSTRUCTION, LLC

Defendant

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CIVIL ACTION NO. 14-CV-00405

JURY TRIAL DEMANDED

**DEFENDANT TRIANGLE F CONSTRUCTION, LLC'S  
MOTION TO DESIGNATE RESPONSIBLE THIRD PARTY**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, TRIANGLE F CONSTRUCTION, INC., Defendant in the above-captioned and numbered cause and files this Motion to Designate JOHN DOE, an unknown person as a Responsible Third Party pursuant to Sections 33.004(a), 33.004(j) and 33.011(4),(6) of the Texas Civil Practice & Remedies Code ("the Act"), and in support of this Motion, Defendant would show the following:

**I.**

1. This lawsuit arose out of a fire that occurred on September 1, 2013. On information and believe, Plaintiff was the insurer of Prodigem, LLC, owner and operator of the Shire Apartments. Prodigem, LLC contracted with Triangle F Construction to repair the foundation and brick facade of the building where the fire occurred. The foundation issues were causing the brick façade to separate from the wall and it was not a safe condition. The subcontractor retained by Defendant removed the brick façade

and covered the wall with tar paper to protect the wood and interior of the building. The light fixtures in question are boxes attached to the wall and the brick was laid around it. As the subcontractor removed the brick, he made sure the fixtures stayed attached or were re-attached pending the placement of a new brick façade. This work was completed on or about August 29, 2013. On information and belief, in the early hours of September 1, 2013, an unknown person, hereinafter “John Doe,” intentionally or negligently set fire to the building with the work in progress.

## II.

2. In 2003, the Texas Legislature adopted “tort reform” of civil actions. The reform was codified into the Texas Civil Practice & Remedies Code (hereinafter referred to as “the Act”). Section 33.004 of the Act governs the protocol for designating responsible third parties. It allows a defendant to file a motion for leave to designate a responsible third party. The motion must be filed on or before the 60<sup>th</sup> day before the trial date, unless the Court finds good cause to allow the motion to be filed later.

3. This Motion for Leave is being filed more than 60 days before trial. Therefore, Defendant is permitted to designate John Doe as a responsible third party.

## III.

4. Defendant contends that John Doe is a responsible third party because he caused the fire and caused or contributed the alleged damages of Plaintiff. Specifically, John Doe intentionally or negligently set fire to the tar paper used to protect the wood and interior of the building.

5. The intentional and criminal act of John Doe caused the fire. The fire set by John Doe caused and/or contributed to the alleged damages for which the Plaintiff

seeks recovery. Defendant, therefore, seeks leave to designate John Doe as a responsible third party under Section 33.004 of the Texas Civil Practice & Remedies Code for the purpose of having his negligence submitted to the trier of fact for appropriate adjudication of this case.

**IV.**

6. This matter is not currently set for trial.

7. WHEREFORE, PREMISES CONSIDERED, the above-named Defendant prays that the Court grant it leave to designate John Doe as a responsible third party and for such other and further relief, both special and general, at law and in equity, to which the said Defendant may be justly entitled.

Respectfully submitted,

By: /s/ Joseph M. Heard

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**CERTIFICATE OF SERVICE**

Pursuant to Rule 5(b) of the Federal Rules of Civil Procedure, I hereby certify that a true and correct copy of the foregoing instrument to which this Certificate is attached was duly served upon each party by facsimile, U.S. First Class Mail and/or using the ECF System for filing and transmittal of a Notice of Electronic Filing pursuant to the Federal Rules of Civil Procedure on this 28<sup>th</sup> day of August, 2014.

**Via Facsimile (214) 462-3299**

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/s/ Joseph M. Heard

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